

19199

ms. Marks

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202051

DATE: August 20, 1981

MATTER OF: James L. Decker

**DIGEST:**

1. Subcontracting with large business under service contract set aside for small business is not legally objectionable.
2. Allegation that agency improperly found protester's proposal to be technically unacceptable is without merit where protester failed to adequately demonstrate that by himself he could successfully complete required study having estimated level of effort of one and one-half man years, and failed to satisfy agency's expressed concern regarding lack of cargo-related information and experience necessary to successful completion of contract.
3. Where offeror's proposal is properly found to be technically unacceptable, its low price is irrelevant.

James L. Decker protests the award of a contract to International Maritime Associates, Inc. (IMA) by the Department of Commerce under request for proposals (RFP) No. SA-RSD-80-0235. The RFP solicited offers to evaluate multimode (high and low speed) express shipping systems which could serve military or unique commercial markets, as well as conventional cargo markets. The procurement was set aside for small business.

Decker's complaints are: 1) the participation of a large business concern as a subcontractor to IMA is improper under a small business set-aside; 2) Commerce unreasonably found that Decker's technical proposal was unacceptable; and 3) IMA's price was 12.5 percent higher than Decker's and price was the most heavily weighted evaluation criterion.

*[Protest of Department of Commerce Contract Award]*

~~018159~~

**116174**

The protest is denied.

Regarding Decker's first allegation, Commerce acknowledges that IMA is subcontracting 34 percent of the contract effort to a large business but argues that this is not prohibited. We agree.

The "Notice of Total Small Business Set-Aside" clause contained in the RFP provides:

\* \* \* a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced by \* \* \* small business concerns; provided, that this additional requirement does not apply in connection with construction or service contracts." (Emphasis added.)

Since the contract in this case is for services, it comes within the exemption. We have held that in light of this exemption, subcontracting with large business firms under a service contract set aside for small business is not legally objectionable. Engineering Computer Optecnomics, Inc., B-203508, June 22, 1981, 81-1 CPD 516.

Decker's second allegation is that Commerce's conclusion that his proposal was technically unacceptable was unreasonable.

Commerce states that after the evaluation of initial proposals, the technical evaluation committee found that Decker's proposal was marginal, but susceptible of being made fully acceptable through discussions. Discussions then were held with Decker and all other offerors whose proposals were considered technically acceptable or capable of being made so. Decker was questioned concerning the two significant areas of deficiency found in his proposal: 1) his ability to handle the task alone; 2) his apparent lack of cargo-related information and experience. Decker was asked to address these matters in his best and final offer (BAFO). After evaluating Decker's BAFO, the technical evaluation committee found that the identified technical deficiencies had not been overcome.

In his protest, Decker asks that we independently review his technical proposal. It is neither our function nor practice, however, to make an independent determination on the acceptability or relative merits of proposals. The evaluation of proposals is properly the function of the procuring agency, requiring

the exercise of informed judgment and discretion. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192. Consequently, in reviewing a procuring agency's evaluation of technical proposals, we will not substitute our judgment for the agency's determination of which proposals are technically acceptable unless it is shown to be arbitrary or in violation of procurement statutes or regulations. SDC Integrated Services, Inc., B-195624, January 15, 1980, 80-1 CPD 44.

With respect to Decker's ability to complete the study alone, we note that the estimated level of effort contained in the RFP was approximately one and one-half man years over the one year period of performance. Decker, however, proposed to perform the study by himself at a level of effort of only 1800 man hours -- less than one man year. In his BAFO, Decker responded to Commerce's expressed concern in this regard by citing his broad technical and management experience and his proven record on previous marine vehicle studies. He did not increase the proposed level of effort.

Our review of the record provides no basis for concluding that Commerce acted arbitrarily when it found that Decker had not sufficiently demonstrated an ability to perform the study alone. The gap between the proposed and estimated levels of effort was significant. Further, while a more experienced firm may be able to perform in less time than a less experienced one in some instances, this is not true in every situation. In this case, the record indicates that the estimated level of effort already was based on performance by experienced personnel. Moreover, as will be discussed below, Commerce concluded that while Decker's prior experience was relevant to some aspects of the study, he lacked specific experience in the crucial area of cargo analysis. Finally, the fact that Decker had completed prior marine vehicle study contracts on schedule is not dispositive, particularly since there was no showing that the level of effort required in those cases was comparable to that required here.

The second major deficiency found in Decker's proposal was lack of cargo-related information and experience. Commerce indicates that this was the primary reason that the proposal was found technically unacceptable. In this connection, Commerce emphasizes that the purpose of the procurement, as set forth in the Statement of Work, is to investigate

multimode express shipping systems which can serve military or unique commercial markets, as well as conventional cargo markets. We also note that the evaluation factors set forth in the RFP included "Methods for Cargo Identification" and experience in "Marketing and Cargo Economic Studies."

In his BAFO, Decker indicated that cargo-related information was available from the Commerce Department's own publications detailing U.S. trade with each of our major trading partners. Commerce maintains that this information is inadequate because it relates only to foreign commerce and completely ignores both the domestic and passenger transportation markets. It is the agency's position that the absence of any mention in Decker's proposal of market data apart from Commerce's international statistics, such as the domestic trade statistics of the Corps of Engineers, signaled Decker's lack of familiarity with the type of market research and cargo analysis needed in a procurement of this type. Commerce also notes that Decker's proposal did not address methods which would identify cargo outside of existing trade operations, thus indicating a lack of capability in the development of new cargo opportunities.

With respect to his experience in the area of cargo analysis, Decker asserted in his BAFO that he possesses expertise in each of the areas of the required work effort. He also emphasized that his experience and background include a number of years in senior management positions, which he felt would enable him to bring a business-oriented focus to the study effort. Decker did not, however, point to any specific experience in marketing and cargo economics studies and analysis. The specific experience he did cite is in the area of engineering -- aircraft, missile, spacecraft, surface ship, and air cushion vehicle design, development, test and operations.

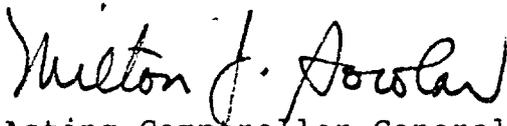
Based on the above, we believe that Commerce had a reasonable basis for its conclusion that Decker failed to adequately demonstrate that he has cargo-related information and experience. Accordingly, we find no reason to object to Commerce's decision to reject Decker's proposal as technically unacceptable.

In the course of commenting on both the agency report on his protest and the conference held at his request, Decker has sometimes attempted to support his position by providing information in addition to that contained in his

initial proposal and BAFO. This information, however, is not relevant to our decision in this case, since an offeror must demonstrate its qualifications in the proposal submitted to the contracting agency in response to a given solicitation. See Servo Corporation of America, B-193240, May 29, 1979, 79-1 CPD 380.

Turning to Decker's final basis of protest--that the contract was awarded at a price higher than Decker offered--we point out that where an offeror's proposal is found to be technically unacceptable, its price is irrelevant. Duroyd Manufacturing Company, Inc., B-195762, November 16, 1979, 79-2 CPD 359. A firm submitting an unacceptable proposal from a technical standpoint in effect is not offering to meet the Government's needs, and the price at which it offers to do so does not matter. SCD Integrated Services, Inc., supra.

The protest is denied.

  
Acting Comptroller General  
of the United States